

## Negotiating Between Unequal Neighbours: India's Role in Nepal's Recent Constitution-Making Process

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# **Negotiating Between Unequal Neighbours: India's Role in Nepal's Recent Constitution-Making Process**

Prakash Bhattarai

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# Negotiating Between Unequal Neighbours: India's Role in Nepal's Recent Constitution-Making Process<sup>1</sup>

**Prakash Bhattarai**

## ABSTRACT

Nepal's post-conflict constitution-making process has seen the involvement of many international actors. While studies on democracy promotion, to this day, mainly focus on Western "donors" and international organizations, this paper looks at the role played by India in the complicated process of moving from a peace agreement to the establishment of an inclusive, democratic constitution in Nepal. More specifically, it is analysed how a powerful neighbouring democracy (India) participated in what is essentially a domestic negotiation process (constitution-making) with a view to influencing the emerging democratic regime. In terms of the issues on the negotiation table, the analysis shows that India, in pushing for an inclusive constitution, pursued the specific agenda of supporting the inclusion of the Madheshis, an ethnic group mostly living in Nepal's Terai region. In terms of negotiation strategies, the paper identifies four different ways in which India tried to influence the constitution: high-level dialogue; economic blockade; international coalition building; and targeted support of domestic oppositional forces in Nepal. Comprehensive as this negotiation strategy was, it only met with partial success. Parameters that limited India's influence included the domestic strength and legitimacy of the official Nepali position (elite alignment; popular support) as well as scepticism concerning India's role in Nepal, which was reinforced by India's overly partisan agenda.

## 1 INTRODUCTION

On 21 September 2015, Nepal's Constituent Assembly (CA) with almost 90 percent of its total vote adopted a new constitution for the Federal Democratic Republic of Nepal. The new constitution was widely welcomed as a great success of a peaceful democratic transition in the country (Mishra 2015, Pokhrel 2015). Since the first CA election held in April 2008, major political forces in Nepal had spent almost eight years in hard-hit negotiations. Nepal's most recent constitution-making process was particularly complex and contentious, as it brought together former warring parties after a decade-long armed conflict to jointly craft a democratic constitution and, thereby, consolidate the Comprehensive Peace Agreement (CPA) signed in November 2006. In addition to the main parties – the former Maoist rebels, on the one hand, and the traditional political parties, on the other – several interest groups and identity-based organizations that had emerged after the end of the armed conflict also actively participated in the negotiations over Nepal's future constitution.

Nepal's post-conflict constitution-making process (2006-2015) was an issue of profound interest for many international actors. Western donors such as the United States (US), United Kingdom (UK), European Union (EU) and Scandinavian countries, United Nations (UN), as well as International Non-Governmental Organizations (INGOs) have supported

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the process in many ways, generally aiming at the establishment of an inclusive, secular, decentralized democratic state with broad guarantees for human rights. Many of these international actors also advocated for an inclusive and participatory constitution-making process. But in addition to the usual democracy promoters, the constitution-making process also saw the involvement of Nepal's neighbours India and China. From the perspective of international democracy promotion, the role of India is of particular interest. While India has generally been described as a reluctant democracy promoter, scholars have noted that India became heavily involved in Nepal's peace and democratization process that took place between 2005 and 2008 (Destradi 2012) or was even "very actively" engaged in promoting democracy in Nepal (Mehta 2011). Yet, as this paper shows, India remained in fact relatively passive during most of the constitution-making process (2008-2014) and only started to actively engage shortly before the adoption of the new constitution (in September 2015) as well as during the implementation phase since September 2015.

The aim of the article is to analyse India's attempt at influencing Nepal's constitution-making process. This is done by understanding the interaction between the Indian government and its Nepali counterparts as a process of negotiation. In general terms, the article, thus, studies how a powerful neighbouring democracy (India) participated in what is essentially a domestic negotiation process (constitution-making) with a view to influencing the emerging democratic regime.

The negotiating role of India in Nepal's democratization process is an interesting and important area of study for three reasons. First, historically, India has had both leverages and linkages to significantly influence political developments in Nepal ever since the 1950s (Grävingsholt et al. 2013, Bhatta 2013). At the same time, India has traditionally perceived Nepal as its sphere of influence (Campbell 2012). India's foreign-policy interests in Nepal are based on the economic ties with Nepal, security concerns due to possible spillover of violent conflict across the common border, and India's deeper interest in continuing its political hegemony over its immediate neighbouring country. In this regard, this article offers a case study of why and how a regional hegemon tries to influence the constitution-making process of a less powerful neighbouring country.

Second, this study's contribution lies in illuminating the role of a non-typical democracy promoter. In carrying forward existing studies on India (See Destradi 2012, Grävingsholt et al. 2013, Mehta 2011), it expands our knowledge on how a "non-Western" country has tried to influence the constitution-making process of a third country and how, in the process, democracy-related concerns and more traditional foreign-policy goals are articulated.

Finally, despite being a key actor in Nepal's domestic politics, no efforts have been taken so far to analyse the process, methods, and impact of India's role in the constitution-making process. In analysing India's aims and strategies vis-à-vis the constitution-making process in Nepal as well as the Nepali political leadership's responses, the article offers important insights into the dynamics of interaction between these two countries at a crucial time period.

This article includes both primary and secondary sources of information. The article particularly draws upon Nepali, Indian, and some international media reports and news coverage published between July 2015 and June 2017. The author has also conducted interviews with 10 Nepali scholars and practitioners particularly from media, civil society, and academia.

This article begins with a short introduction to Nepal-India relationship with special reference to India's stakes in Nepal's political development from past to present. The article then sheds light on the process of negotiation between India and Nepal during the most

recent constitution-making process, focusing on India's negotiation strategies during the final stages briefly before the adoption of the new constitution and afterwards, in which India became particularly involved. In a nutshell, the analysis shows that India, in pushing for an inclusive constitution, in fact pursued a rather specific agenda that was driven by strategic considerations: to support the inclusion and representation of the Madheshis, an ethnic group mostly living in Nepal's Terai region (issue of negotiation). India's negotiation strategies included high-level dialogue, economic blockade, international coalition building, as well as the targeted support of domestic oppositional forces in Nepal. Comprehensive as this negotiation strategy was, it only met with partial success. Parameters that limited India's influence included the domestic strength and legitimacy of the official Nepali position (elite alignment; popular support) as well as skepticism concerning India's role in Nepal, which was reinforced by India's overly partisan agenda.

## 2 THE NEPAL-INDIA RELATIONSHIP AND INDIA'S STAKES IN NEPAL'S POLITICAL DEVELOPMENT

In light of its open border with Nepal and, to a large degree, common culture, traditions and religion, India has been leveraging Nepal's policy since 1950's. India played a key role in negotiating deals between the autocratic Rana Regime, King Tribhuvan, and Nepali Congress during the 1950s, and thus paved the way for Nepal's first experiment with democracy. India was one of the key backers of the 1990's nonviolent People's Movement jointly led by the Nepali Congress and the Left Alliance that fought against the King in order to establish a multiparty democracy. India was also supportive of the People's Movement's success in bringing down King Gyanendra's authoritative regime in 2006. With its active and facilitative role to bring the Maoist and mainstream political parties of Nepal together to sign the 12-point agreement in October 2005, India can also rightly be considered to be an important actor of the peace process over the past decade (Majumder 2015, Bhattarai 2016). This deal between the Maoist rebels and the Seven Party Alliance (SPA) was instrumental to the success of the People's Movement and enabled the Comprehensive Peace Accord (CPA) between the Maoists and the Government of Nepal in 2006 and, eventually, the CA election in 2008. In sum, since the 1950s, India has been an important actor in Nepal's domestic politics and, in several instances, contributed to democratic developments in the country.

With a view to Nepal's most recent constitution-making process, India officially emphasized its desire to see the country becoming a peaceful, stable, developed, and democratic state (GOI 2015). India's interference in the constitutional debate had the declared aim of encouraging the major parties to increase the document's legitimacy (ICG 2016). But, as in previous cases of Indian involvement in Nepal's internal affairs, this official position was also defined by Nepal's geo-political reality as seen through the lenses of Indian policymakers (Campbell 2012, Bhatta 2013). In fact, India has had direct and indirect interests in Nepal's constitution-making process, as the provisions of the new constitution of Nepal would have an impact on India's national security and wider foreign policy, on bilateral economic relations as well as on water resource management.

India's neighbourly concerns are closely tied to the Southern Nepali border. India has long supported the interests of the Madheshis, one major ethnic group mostly living in the Terai region of Nepal. The Madheshis share close family, cultural, and ethnic ties with people in bordering Indian states. Perceived discrimination against the Madhesi – from the Indian perspective a relevant factor during the constitution drafting process as well – hits a nerve with those Indians who consider this a discrimination against their own blood (Majumder 2015). Beyond this emotional connection, discontent and unrest among Madhesi populations has a clear security dimension for India: due to adjoining borders

with India's two most densely populated states, it is much concerned about spillover effects of continuous protests in Terai region of Nepal.

These circumstances have shaped India's thinking on and attempts at influencing the recent Nepali constitution making process. India has interpreted the new constitution as detrimental to the interests of the Madheshi population (RSTV 2015). India has long been pro-active on behalf of Madheshi population and was witness to the 2008 agreement between the Government of Nepal and Madheshi parties (Jaiswal 2016) which focused on finding political solutions on pressing Madheshi grievances. As per the views of Madheshi leaders, their grievances are associated with too little political representation of their people in the parliament, discriminatory constitutional provisions that do not sufficiently guarantee citizenship rights of the people from the Terai region, and the unfulfilled demand of delineating federal states according to the interest of Terai-based political parties.

Not surprisingly then, it was in reaction to the recent widespread discontent with the new constitution among the Madheshi that India called upon the Nepali government to guarantee *broad-based consensus* and *inclusivity* of a renewed constitution-making process as well as to allow for the construction of federal states. Terai-based parties, according to India, needed their interests to be considered by the three major political parties in Nepali Congress, Nepal Communist Party, United Marxist and Leninist (CPN-UML), and United Nepal Communist Party (Maoist) and included in the constitution. India argued that a constitution which has not garnered support from all segments of society may have the potential to spread violence not only within the country, but also to spill over the open border into India (Majumder 2015). An "inclusive" constitution on the other hand would bring peace and stability in Nepal, as India argues, it would thus also serve India's security concerns (Jaiswal 2016).

According to media reports from both Nepal and India, and interviews with Nepali scholars and practitioners active in media, civil society, and academia, the three major Indian interests with regard to Nepal's constitution are related to the construction of federal states in the Terai region, a constitutional guarantee for the adequate representation of the Madheshi community in different state organs, and citizenship rights of Indian women married to Nepali nationals, particularly in bordering districts of Nepal (Mazumder 2015). India's deep interest in the construction of federal states in the Terai region and adequate representation of Madheshi people in different state organs was driven by the assumption that this would enable India to influence Nepal's decision-making on issues around water resource management, foreign policy, security policy and many more (Interview 1, February 2017).

It has also been reported that the Indian political elites are interested in keeping Nepal as a Hindu state instead of it becoming a secular state as provided by the new constitution (Interview 1, 2016). Due to the rise of Hinduism, Indian elites, particularly the present Indian government, oppose the idea of Nepal becoming a secular state. Despite strong pressure on Nepali political actors (Interview 2, 3, & 4, February 2017), it became evident that the Nepali domestic political environment, including high-ranking leaders from all political parties, was in favour of secularism. Secularism had also been one key demand of the Maoists since they started their armed struggle. This agenda was further backed by a number of ethnic groups that had emerged since 2007 (Interview 1, February 2017). Although secularism is widely perceived as one key demand on the negotiation agenda on the Indian side, this issue is not well covered in the media. For the purposes of this article, it will therefore not be considered further.

Moreover, India's involvement in Nepal's constitution-making process has also allegedly been spurred by minimizing the growing presence and influence of China as well as

Western countries in its neighbouring nation (Bhatta 2013). India considers itself to be the sole regional power in South Asia (Interview 2&3, 2016). If any problems arise in the region, India has often attempted to seek for possible interventions, except in Pakistan. Its continued involvement in Nepali affairs can thus be interpreted as a signal underlining India's regional dominance. Moreover, as a matter of perceived respect, it is difficult for India to accept, possibly even intolerable, that the three major political parties of Nepal would ignore its calls for inclusion of the Madheshi during the constitution writing process. Considering Nepal's weak state institutions, the desire to produce a favourable outcome of the constitution-making process as well as to take credit for solving Nepal's problems may also have played a role (Interview 2 & 3, 2016). India also believes that it has an ability to counter Western influence in the region (Interview 2, 3&4, 2016). With the growing presence of China and Western countries in post-conflict Nepal, India is deeply concerned about losing influence, thus looking for avenues through which it could send a message of it being the most influential power in Nepal. Nepal's constitution-making process was an opportunity for such a message.

### 3 INDIAN NEGOTIATION STRATEGIES AND NEPAL'S RESPONSE

India was involved in multifaceted negotiations with Nepal's political leadership during the constitution-making process. India's involvement in Nepal's most recent political affairs began in late 2005 even before the first CA election, and its role during that time was focused on facilitating and providing a venue for dialogue between the SPA and Maoists (ICG 2007, Destradi 2012). This dialogue eventually led to the successful signing of a 12 point agreement between the SPA and the Maoists, which created a foundation for the nonviolent People's Movement against the monarchy in April 2006, the signing of the CPA in November 2006, and the beginning of constitution making process. During the first CA election period, India offered advice and physical support in the form of vehicles for the successful conduction of the CA. India also repeatedly sent its deputy chief election commissioner and other senior officials to advise the Election Commission of Nepal. Early on, India also appointed a focal person to pay special attention to Nepal's political development and constitution-making process.<sup>2</sup>

India's agenda with regard to Nepal's constitution-making process has remained relatively stable over time. Fundamentally, India has, through different means, consistently expressed that the constitution as it was taking shape and was then eventually adopted was not 'broad-based' – meaning inclusive – from both the *process* and *content* point of view (Majumder 2015). Although India used its political and diplomatic channels for influencing the drafting process and despite its long-time economic and political influence over Nepal, its efforts were quite unsuccessful – in spite of the fact that India had easy access to top rank political leaders from all major political parties and in spite of the pressure that it applied on the Nepali political leadership in order for its concerns to finally be adequately addressed.

Realizing that its attempts at influencing the new constitution were likely to fail, India became especially active in the weeks before the constitution was to be promulgated. At that time, its key strategy became postponing the date of adoption. When that strategy failed and the constitution was adopted with more than 85 percent of the total votes of CA members, India then focused on amending the constitution according to its wishes. According to a news report (Indian Express) in late September 2015, which quoted an anonymous source from the Indian External Affairs Ministry, the Indian government basi-

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<sup>2</sup> Initially, this role was performed by Shyam Sharan former Indian ambassador to Nepal. Later on, this role was taken over by India's resident ambassadors to Nepal.



cally demanded the adoption of seven major amendments to address the concerns of Madheshis and Terai based political parties. According to the report, all Indian concerns were “conveyed to Nepal’s leadership through official channels” (Rawat 2015). The seven amendments were the following: a) the crafting of electoral constituencies in proportion to the population, b) the right to participate in state structures on the basis of principles of proportional inclusion, c) enabling citizens by descent or naturalization to run for and hold all key political offices including President, Vice-President, Prime Minister, Chief Justice, Speaker of Parliament, Chairperson of National Assembly, Head of Province, Chief Minister, Speaker of Provincial Assembly and Chief of Security Bodies, d) representation in National Assembly to be based on population of the Provinces, e) delineation of federal states, f) delineation of electoral constituencies every 10 years, and g) acquisition of naturalized citizenship to be automatic on application (Roy 2015).

During the late stages of constitution writing as well as the post-adoption phase, India mainly pursued four negotiation strategies in order to influence the constitution writing and amending process in Nepal. India intensively made use of *high-level dialogue* through its political and diplomatic channels to express its concerns and reservations. When Indian leaders and officials realised that adoption without recognition of India’s demands was imminent, visits of Indian officials to Nepal and meeting requests by the embassy in Kathmandu to political leaders and ministers intensified notably. When India’s political and diplomatic efforts were not successful, it used *economic blockade* as a tool to increase its bargaining power over Nepal and particularly in order to bring about substantial amendments to the newly adopted constitution according to its wishes. Officially, India rejected any responsibility for the blockade, which it attributed solely to the disaffected parts of the population that felt underrepresented and thus created disruptions. It is likely, however, that the Indian government at least did play a role in facilitating the blockade. India also attempted to bring other international actors on board to have a common view regarding Nepal’s constitution-making process, thus taking efforts at *coalition building* with other international actors. India tends to be hesitant to collaborate with other international actors on Nepal’s matters considering that such effort will increase other actors’ influence on Nepal. However, the matter of amending the constitution was so important that India even engaged with other external actors. Finally, India also remained quite strategic in terms of *strengthening relationships with dissatisfied domestic political forces* mobilising against the government and mainstream political parties, as it lend moral and political support to the expression of grievances.

India used these different negotiation techniques at different points in time. In the following, these strategies are illuminated further. The following section also provides an assessment regarding their success in influencing Nepali leaders’ decision-making.

### 3.1 *High-level political and diplomatic dialogue*

The Indian Embassy in Kathmandu became quite active during the final phase (August-September 2015) of the constitution-making process and intensely lobbied to change the draft constitution in order to reflect India’s concerns. Ranjeet Rae, former Indian ambassador to Nepal, did several trips between Kathmandu and New Delhi for consultation with his government on how to best engage with the Nepali leadership (Roy 2015). On 25 August 2015, the Indian Prime Minister Narendra Modi himself made a phone call to his Nepali counterpart Sushil Koirala and expressed his concerns regarding a nonviolent and truly inclusive constitution-making process (Roy 2015). As the time of the scheduled adoption drew closer, a number of press statements were released from the Indian side highlighting the need for broad-based consensus and a nonviolent constitution writing process. For example, the External Affairs Minister of India issued a press statement on 14 September 2015, just a week before the promulgation of the new constitution. The



press statement emphasised India's firm commitment to support peace, stability, unity, and development in Nepal and underlined India's long-standing support to Nepal whenever it had faced political crises and natural disasters. It also praised the progress that the Constituent Assembly had already made, including the resolution of several contentious issues. However, the statement then expressed deep concern regarding the ongoing protests and strife in several parts of Nepal and urged for "continuing flexibility on the part of all the political forces so that any outstanding issues are addressed through dialogue and widest possible agreement, in an atmosphere free from violence" (GOI 2015a). The need for a "durable and resilient Constitution" to build a modern Nepal was also highlighted. This press statement was the first *public* attempt to communicate India's concerns and dissatisfaction and can thus be understood as a desperate attempt to increase the pressure on Nepali political leadership.

One high-profile attempt at changing the constitutional draft at the last minute was also the Indian Foreign Secretary Subrahmanyam Jayshankar's visit to Nepal on 17-18 September 2015 (Interview 1, 2&3 February 2017). Jayshankar came as special envoy of Indian Prime Minister Narendra Modi and met with key political leaders of Nepal including the Prime Minister as well as the leaders of all political parties, among them also the Madheshi leaders. His key message was that it was crucial to "ensure widest possible agreement on constitution for peace and stability in the country" (Majumder 2015). Jayshankar told KP Sharma Oli, top leader of the CPN-UML, that "it would have been better if the disgruntled Madhesh-based parties were brought on board the constitution drafting process before promulgating the new constitution" (TKP 2015b). In response, Oli merely pointed out that the new constitution had been adopted with the approval of more than 85 percent of lawmakers and in the presence of 90 percent of the total CA members. When Jayshankar raised India's security concerns with the UCPN-Maoist Chairman Dahal, the latter emphasised that Nepal was indeed more concerned than India about the deteriorating security situation in Terai. Dahal also went as far as commenting that the timing of Jayshankar's visit just before the promulgation of constitution was inappropriate, as it gave a negative impression regarding India's roles and presence in Nepal. Jayshankar's meeting with the prime minister ended more amicably; Koirala assured the Indian envoy that a 'win-win solution' to the problems associated with Nepal's constitution-making process would be found (TKP 2015e).

Following Jayshankar's departure, he issued a press statement warning that the completion of the constitution-making process should "be an occasion for joy and satisfaction, not agitation and violence" (EOI 2015). He also called upon Nepali political leaders to "display the necessary flexibility and maturity at this crucial time to ensure a durable and resilient Constitution that has broad-based acceptance" (Jaiswal 2016). In sum, Jayshankar put notable pressure on the Nepalese government and top-level political leadership to delay the adoption of the constitution, hold discussions with political groups opposed to it, and make it widely acceptable to all groups, particularly the Madhesh-based political leaders (Majumder 2015).

However, Jayshankar's proposal was rejected by all top-level Nepali political leaders who were committed to adopting the new constitution on schedule. Thus, despite India's diplomatic and political pressure on the eve of promulgating the new constitution and despite the top level Nepali political leaders' assurance to find a mid-way solution to address the concerns of dissatisfied groups with the draft of the constitution, the three major political parties in Nepali Congress, CPN (UML), and UCPN (Maoist) took a bold decision to adopt the new constitution on the stipulated date. Indian establishment became quite frustrated with the Nepali political leadership for not taking their advice seriously. As a result, the Indian government did not welcome the constitution but only formally "noted" that a constitution had been adopted in Nepal. Such step taken by India was not

only the beginning of a diplomatic crisis, but also a contributing factor to increase anti-India sentiment in Nepal.

In the following weeks and months, several high-level meetings attempted to relieve strains in the bilateral relationship. India's lukewarm reception of the new constitution caused resentment in Nepal. Moreover, the intensity of aggression and confrontation was growing at various places in the Terai region due to the protests by Terai based parties' dissatisfaction with the newly adopted constitution.

Following the contentious relationship between Nepal and India after the promulgation of the new constitution, Nepal's Prime Minister Koirala and Indian Ambassador Rae met in Kathmandu on 23 September 2015 (Bhattarai 2015a). This meeting particularly focused on discussing the differences and the resentment between the two countries after the promulgation of the new constitution. Although the details regarding this meeting were not published, Dinesh Bhattarai, the then Prime Minister's Foreign Affairs Advisor, briefly told to the press that positive talks were held between them regarding the Nepali-Indian relationship after the promulgation of the new constitution. During this meeting, Prime Minister Koirala had assured ambassador Rae to take the initiative to resolve the issues with the dissenting Terai-centric political parties by bringing them on board for talks (TRN 2015) and if needed amend the constitution.

Another important meeting on the same day (i.e. 23 September 2015) took place in New Delhi between the then Nepali ambassador to India Deep Kumar Upadhyay and Indian Prime Minister's National Security Advisor Ajit Doval. During this meeting Doval gave a clear message to Upadhyay for "an immediate need for political dialogue and consensus between the concerned stakeholders" in Nepal (Bhattarai 2015a). Doval once again emphasised the need for a broad-based consensus among Nepali stakeholders regarding the content of the new constitution. What exactly Nepali ambassador responded to Doval's concerns is not clear, yet both sides reiterated their goodwill to maintain dialogue and foster mutual understanding after the Indian Prime Minister expressed his serious concerns over the straining ties between two neighbours in the post-constitution period of Nepal.

Several high level exchanges followed. For instance, one such exchange took place in Kathmandu on 12 October 2015 between Nepal's new Prime Minister KP Sharma Oli and Indian ambassador Rae on finding ways to improve the contentious Indo-Nepal relationships as result of an unofficial economic blockade imposed by the Indian side (see also section below). In the meeting, Prime Minister Oli reiterated his government's priority on the long and fruitful ties with India for the mutual benefit of both countries, where Ambassador Rae repeated the same rhetoric that the blockade was not imposed by India (RSTV 2015). As a continuation of high level exchanges, Prime Minister Oli sent his Foreign Minister Kamal Thapa for a visit to India in the third week of October 2015 where he called on the Indian political leadership to ensure the trade of essential goods across the common border (see below). In response, the Indian political leadership reportedly reemphasised that India was not behind the economic blockade, but that it was rather the insecurity in the Nepali-Indian border that disrupted the movement of vehicles. Likewise, during his different high-level meetings with India's External Affairs Minister, Home Minister and National Security Adviser of India, concerns were raised about the delay in constitution amendment to address the grievances of the Madheshi groups over the delineation of federal states and gave a clear indication that relations between the two countries would not improve without addressing the problems in Terai. In response to their concerns, Minister Thapa briefed them about Nepal government's initiation of forming a high-level political committee to hold talks with the disgruntled groups and the beginning of dialogue process to resolve problem through talks and consensus (Bhattarai 2015b). Although Minister Thapa claimed that his visit was successful in bringing Nepali-Indian

ties back on track, the stance of India regarding Nepal's constitution-making process remained unchanged.

Following Nepal's Foreign Minister's visit to India, Prime Minister Oli called his Indian counterpart Narendra Modi on 31 December 2015. During the 20 minutes long conversation, Oli discussed the obstructions at the Nepali-Indian border points and requested Modi to take initiatives to ease supply of essential commodities through different border points. In response, Modi once again stressed on finding a "sahamati" (broad based consensus) on the constitution by bringing the conflicting parties into dialogue. He also repeated the same rhetoric that restrictions at border-points were due to the protests on the Nepali side and that the Indian government had no role in the halt of supplies. He moreover issued an invitation for Oli to come to visit India (TKP 2015c, Giri 2016).

Following this invitation, Prime Minister Oli paid a 6-day State Visit to India from 19 to 24 February 2016. This visit was mainly focused on ending the blockade and improving the shaky relationships between India and Nepal that emerged after the promulgation of Nepal's new constitution. During a joint press meeting Oli stated that his visit was aimed at bringing bilateral relations back on track. In response, Indian Prime Minister Modi appreciated that Nepal's constitution-making process is an important achievement Nepal has made in its democratic process (MoFA 2016b). Yet, Modi once again conveyed to Oli that the new constitution could only be successful after resolving contentious issues through consensus and dialogue in a time-bound manner. Modi also gave emphasis on the fact that a volatile situation in Nepal on constitution related issues would have a direct impact on India (First-Post 2016).

Nepal's new Prime Minister Pushpa Kamal Dahal's State visit to India from 15-18 September 2016 was another effort from the Nepali side to improve its relationships and build trust with India. In this regard, Nepal's Prime Minister Dahal, giving an official address in Hyderabad House, New Delhi expressed his government's efforts to take all sections of Nepali society on board for the effective implementation of the constitution. In response, Prime Minister Modi appreciated his efforts of the constitutional consolidation of democracy in Nepal and also welcomed the ongoing efforts of the Government of Nepal to take all sections of the society on board for effective implementation of the constitution (The Hindu 2016, MoFA 2016a). Although India welcomed the efforts, their key negotiation agenda such as the assurance of broad-based consensus was still highlighted. As reported by The Hindu, Indian Foreign Secretary Jayshankar hinted that India would not back off from its engagement with the Madhesh issue. He also believed that the constitution of Nepal would go for full fledge implementation only accommodating the grievances of all sections of Nepalese society, which at present is lacking (The-Hindu 2016).

### 3.2 *Economic Blockade*

When the diplomatic and political negotiation attempts did not work according to plan, India, by (unofficially) imposing an economic blockade on 21 September 2015, took a more aggressive approach to increase its leverage. This represents the most extreme expression of India's dissatisfaction with Nepali political leadership. The blockade, obviously, was never an official act; India repeatedly denied any connection to it and pointed to the political unrest in the Terai region as responsible. In effect, the transportation of most essential goods such as petroleum products was interrupted several times at the Nepal-India border. This escalation led to a severe crisis in the diplomatic relationship between the two neighbours and there was a rapid rise of anti-India sentiments in Nepal.

India practically ignored appeals by Nepali leadership to end the blockade. For example, on 25 September 2015, four days after the adoption of the new constitution, Nepal's

Prime Minister Sushil Koirala and CPN-UML leaders KP Oli and Madhav Kumar Nepal – in separate meetings – drew attention to this issue with Indian Ambassador to Nepal Ranjit Rae. The Nepali policymakers asked for clearance of Nepal-bound cargo stranded on the Indian side of the border and also stressed the need to improve the strained relationships between the two countries through dialogue. Responding to senior leaders' comments, the Indian ambassador denied any responsibility for the obstruction of the movement of vehicles with goods to Nepal. Rather, political unrest in the border region due to massive dissatisfaction with the constitution-making process was to blame (Haidar 2015, TKP 2015a, Giri 2015). Ambassador Rae repeated his comments as speaker at a meeting organised by the Nepal-India Friendship Association on 29 September 2015, where he also assured Nepali leaders that India was taking the initiative to resolve the crisis (Haidar 2015, TKP 2015a, Giri 2015). Similar statements were given by other Indian government officials from the Ministry of External Affairs, some emphasising that events on the Nepali side of the border were beyond India's control (Haidar 2015). Likewise, on 3 December 2015, Sushma Swaraj, External Affairs Minister of India in Rajya Sabha, denied any economic blockade by India (GOI 2015b). However, Nepali political leaders very clearly perceived the economic embargo as an Indian strategy to punish Nepal for promulgating its constitution without adequately consulting India.

### 3.3 *International Advocacy and Coalition Building*

Another negotiation strategy – one that India used probably for the very first time in its relationship with Nepal – was leveraging international forums. The Indian delegation, during the 23<sup>rd</sup> Session of the Universal Period Review (UPR) in Geneva on 3 November 2015, expressed concerns about violence and unrest and the death of 45 people in the Terai region after Nepal adopted the new constitution. In response, Nepal's Foreign Minister Kamal Thapa clarified that "Nepal has every right to promulgate its constitution on its own, and restricting supply of goods from the border is unacceptable" (TKP 2015d). Minister Thapa further said that the crisis in Terai was its internal problem that Nepal had the capacity to solve on its own. He also noted that the death of 45 people in Terai had occurred before the constitution was adopted. He further emphasised that the Nepal government was serious about addressing the concerns raised by the Madheshi community, and reiterated that the new constitution was written and promulgated in a democratic manner to accommodate all voices from society (TKP 2015d).

Another instance of India's attempts at international advocacy and coalition building on the issue was Indian Prime Minister Narendra Modi's visit to the UK on 12-13 November 2015. Modi and his British counterpart David Cameron issued a joint press statement which emphasised the need of a lasting and inclusive constitutional settlement in Nepal by addressing the remaining areas of concern in Nepal's constitution (Myrepublica 2016b). In response, Nepal's Ministry of Foreign Affairs issued a counter press statement, emphasising that constitution-making was an internal matter of the country and that Nepal was capable of handling its internal affairs on its own (Myrepublica 2016b). Similarly, India also issued a joint press statement together with the EU in Brussels on 30 March 2016 during 13<sup>th</sup> EU-India Summit, reiterating "the need for a lasting and inclusive constitutional settlement in Nepal that will address the remaining Constitutional issues in a time bound manner, and promote political stability and economic growth" (EU-India 2016). Nepal strongly objected to this statement. Issuing a counter statement, Nepal's Ministry of Foreign Affairs on 31 March 2016 called upon India and the EU "to fully respect the sovereign and democratic rights of the people of Nepal and refrain from making uncalled for statements" (Myrepublica 2016b). Nepal's statement further recalled that "[t]he Government and People of Nepal are fully capable of resolving their issues themselves within the framework of the constitution" (MoFA 2016c).

### 3.4 Support for Dissatisfied Groups

India intended to create pressure on the top level Nepali political leadership through domestic actors as well. For this purpose, it supported the Terai-centric political parties who were dissatisfied with some of the provisions of the new constitution and had launched protests in Terai immediately after the promulgation of the constitution. The support of India to these groups mostly came in the form of solidarity with their protests against the government. On several occasions, the Indian embassy in Kathmandu as well as the Government of India invited the top level leadership of Madhesh-originated parties for political consultations and discussions on the roadmap of their movement for amending the constitution. In the first week of December 2015, senior leaders representing Madheshi Morcha (Alliance) paid a visit to India to brief the Indian leaders regarding their ongoing mobilisation in the Terai region. During the visit, they met Indian Minister for External Affairs Sushma Swaraj who assured India's moral support to the ongoing (peaceful) protests in the Terai region to create pressure on the government for amending the constitution. It is also reported that she called for "broad-based ownership of Constitution and encouraged speedy political solution and return to normalcy on that basis" (THT 2015). Overall, it was widely perceived that the protests in the Terai region were backed up by India.

Indian officials even went as far as meeting leaders from Madheshi parties in Rajbiraj, the epicentre of Terai protest, on 11 May 2016. Deputy Chief of Mission at Kathmandu-based Indian Embassy, Vinay Kumar, met with Madheshi leaders to inquire about plans to take the protests to Kathmandu. It was reported that, during this meeting, Indian diplomats advised the Madheshi leaders "to focus on Capital-centric protests rather than district level protests as it is more likely to influence government to address the demands raised by Madheshi people," including demands for constitutional amendments (TKP 2016a). Madheshi leaders also received advice from the Indian officials about how to ensure a large number of participation in Kathmandu centric protests. Moreover, Indian officials also advised the local political leaders to continue their rights based struggle until they achieved their goals (TKP 2016a). In addition to these meetings, the Indian ambassador to Nepal organised a number of meetings with the leaders of Madheshi parties to discuss the future of ongoing protests in the Terai region.

## 4 DISCUSSION

India's involvement in Nepal's most recent constitution-making process is a continuation of its involvement in the peace and democratization process since 2005. Initially, Indian interests were focused on the overall issue of resolving the armed conflict and restoring democracy in Nepal; always also in consideration of the fact that such efforts would stabilise the country and protect India's influence in Nepal (Destradi 2012). Since then, the focus of India's involvement in Nepal's democratization process has shifted significantly.

Although India has been involved in negotiations with the Nepali political leadership throughout the constitution-making process, the most active negotiation phase was shortly before the adoption of the constitution (in September 2015) as well as during the implementation phase (since September 2015). From the very beginning until October 2017, Indian officials emphasised the need for an *inclusive* constitution and that consultation among all relevant Nepali stakeholders was necessary. India, through different means such as high level political dialogue, diplomatic engagement, press releases, and

international advocacy and coalition building with other international actors, kept on repeating this demand in different languages and by different people until today.<sup>3</sup>

India's negotiation approaches were multifaceted, combining and/or sequencing four different strategies to exert influence on the Nepali political leadership. Throughout, India used its political and diplomatic channels to lobby for a revision of the constitution. At times, this direct dialogue was complemented by teaming up with other diplomatic actors such as the EU and the UK in order to issue joint statements on Nepal. Economic sanctions, albeit unofficial, were another negotiation strategy when purely diplomatic efforts turned out to be unsuccessful. Moreover, India also worked closely with oppositional domestic forces within Nepal in order to increase the pressure on the Nepali political leadership from the inside.

Comprehensive as this set of negotiation strategies was, India's efforts have only partially been successful. The first constituent amendment bill was tabled by the KP Oli government just a few months after the promulgation of the constitution. Some amendments to the constitution were actually made on 23 January 2016 by a two-third vote. One key amendment increased the number of parliamentary seats from the 20 districts of the Terai region (GLM 2016). Yet, this amendment neither satisfied India nor the Terai-based parties. In early August 2016, the Maoist-Congress alliance came to power with a promise to amend the constitution to address the Terai centric parties' concerns. On 29 November 2016, the government issued a new constitution amendment bill, which India considered an "important step" to accommodate the grievances of the Madheshi groups (Myrepublica 2016a, TKP 2016b). Yet, in the end, the amendment bill failed to receive the necessary two-thirds majority in the parliament.

Why was India, with its long-standing influence on its more dependent neighbor, not more successful? The analysis of the negotiation process between the two parties suggests that four main reasons account for this. First, the immense diplomatic and political pressure met with a high sense of unity among Nepal's main political leaders and parties. This elite alignment enabled, and was reinforced by, the adoption of the new constitution by more than 85 percent of the total CA members. Hence, the domestic strength and unity of the Nepal's political elite seriously limited potential access points which India could have used to influence the policy-making process at the national level.

Second, this elite consensus also met with broad popular support in Nepal. Although public opinion in Nepal was generally divided with regard to the new constitution, during that time most domestic public forces (particularly the left as well as traditional democratic forces) supported the new constitution. Most were convinced that the constitution would resolve key governance, development, inclusion, and political stability problems that Nepal had faced over the past 25 years. As a result, pressure from domestic public forces on Nepal's political leadership to adopt the constitution also counteracted India's efforts to revise it.

Third, among Nepal's major parties there were also contested opinions regarding India's role in the changed political context of Nepal, which proved another crucial factor that limited India's position in the negotiations with its Nepali counterparts. Particularly, the communist parties including the UCPN (Maoist) and CPN (UML) desired to break the

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3 Recent events have led observers to speculate about a possible change in India's position vis-à-vis the ongoing constitution amendment process in Nepal. In 2017, India's new ambassador to Nepal Majeed Singh Puri pressed the Madhesh-based parties to participate in the local government elections by putting their demand of a constitution amendment on hold. Yet, on 16 June 2017, a spokesperson of India's Ministry of External Affairs clarified that "New Delhi has not pressed either the ruling parties or the Madhesh-based parties on constitutional amendments or election-related issues" and that India remained in favor of an inclusive constitution and a consultation that would enable broad-based ownership of the document (Bhattarai 2017).



traditional Indian influence over Nepal and they saw the constitution-making process as an opportunity in this regard. Likewise, the Nepali Congress, the leading democratic force at that time, also took a stance in favour of a constitution that was crafted by Nepali people with limited or no involvement of international actors including India. In contrast, the right-wing parties who were in favour of seeing Nepal as Hindu state and Terai based regional parties who wanted to design the new constitution to their advantage, desired to take help from the Indian side to make them themselves domestically stronger in the constitution negotiation process. However, the groups who wanted to have limited Indian involvement in Nepali politics remained more influential and unified than other local groups during the constitution-making process.

Fourth, the way India framed and presented its demands also weakened its position. Most notably, while India generally called for an inclusive constitution, in fact it only lobbied for the inclusion of one particular ethnic group (the Madheshi) and region (the Terai). Such an openly partisan agenda made India ineffective as well as suspicious regarding its role in Nepal's constitution-making process.

## 5 CONCLUSION

Constitution-making processes in post-conflict countries are characterised by the involvement of a whole range of international actors that aim at promoting the transition to a peaceful and democratic order. Yet, in practice, whenever governments engage in the promotion of democracy and peace, this comes along with more self-centred foreign-policy goals. This holds for India as it does for more traditional democracy-promoting countries, and it is particularly the case in "recipient" countries that are of strategic value (such as Nepal for India). Such foreign-policy interests do not necessarily mean that the aim to promote democracy is entirely compromised, but it will always shape the ways in which democracy promotion is conceptualised and implemented in a given context (Wolff, Spanger, and Puhle 2013). This could also be observed in the case of India's involvement in Nepal's constitution-making process. While the overall principles supported by the Indian government – broad-based consultations, an inclusive constitution – were certainly in line with a democracy promotion agenda, they were applied and implemented in ways that clearly reflected India's strategic, economic, and security interests, rather than a genuine motive to promote democracy in its neighbouring country. India's push for inclusion of the Madheshi people from the Terai region, in the end, basically aimed at securing Indian influence over political decision-making in Nepal.

The 2015 Constitution of Nepal has been welcomed by most international actors including China, US, EU, UK, Finland, Norway, Denmark, and Germany who recognised it as a historic progress in the political transition of Nepal and as an important step towards strengthening and institutionalising democracy (GoN 2016). India, in contrast, did not welcome the constitution (GoN 2016). First, whereas India had traditionally played an important role in all major political developments in Nepal since the 1950, it did not assume such influential role in the most recent constitution-making process. Second, as seen, India was frustrated by certain provisions of Nepal's new constitution related to the construction of federal states and citizenship rights and continued to demand their revision, even after the constitution was adopted.

India's push for an inclusive constitution in Nepal that would consider the legitimate interests of ethnic and regional minorities, is certainly valid when it comes to constructing a peaceful and stable democracy in this post-conflict country. However, when it came to negotiating this aim with the Nepali counterparts, this article has shown that the strategic reasoning behind India's position has tended to undermine the negotiation strategies applied. Also, it has been shown that even powerful states have a hard time influencing



domestic political processes in much weaker neighbouring countries when domestic elites are united and rely on democratic legitimacy and popular support.

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